

State of Wisconsin



2011 Senate Bill 378

Date of enactment: April 6, 2012
Date of publication*: April 19, 2012

2011 WISCONSIN ACT 224

AN ACT *to repeal* subchapter III (title) of chapter 618 [precedes 618.39] and 618.43 (1) (b); *to renumber and amend* 646.31 (4) (a); *to amend* 618.41 (6m), 618.41 (8) (a) (intro.), 618.41 (8) (c), 618.41 (9) (a), 618.43 (1) (a) (intro.), 618.43 (1) (a) 3., 618.43 (1) (d), 618.43 (6), 628.03 (1), 628.05 (1), 628.34 (1) (a), 631.01 (4m), 631.20 (1) (a), 631.20 (1) (c) 9., 631.20 (1m) (a) (intro.), 631.85, 632.32 (2) (ac), 632.32 (4) (a) (intro.), 632.32 (4) (bc), 632.32 (4) (d), 632.32 (4m) (a), 632.32 (4m) (e), 646.01 (2) (b), 646.31 (1) (intro.), 646.35 (1) (b) and 646.35 (6) (b); and *to create* subchapter III (title) of chapter 618 [precedes 618.40], 618.40, 618.41 (12), 618.416, 618.43 (1) (bc), 631.20 (7), 632.32 (2) (ab), 646.03 (4m) and 646.31 (4) (ag) of the statutes; **relating to:** surplus lines insurance, insurance security fund, automobile insurance, and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Subchapter III (title) of chapter 618 [precedes 618.39] of the statutes is repealed.

SECTION 2. Subchapter III (title) of chapter 618 [precedes 618.40] of the statutes is created to read:

CHAPTER 618
SUBCHAPTER III
PERMISSIBLE BUSINESS BY
UNAUTHORIZED INSURERS

SECTION 3. 618.40 of the statutes is created to read:
618.40 Definitions. In this subchapter, unless the context requires otherwise:

(1) "Affiliated group" means all persons that control, are controlled by, or are under common control with, an insured.

(2) "Authorized insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the home state.

(3) "Control" means, with respect to a person having control over another person, that the person does any of the following:

(a) Directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote 25 percent or more of any class of voting securities of a person.

(b) Controls in any manner the election of a majority of the directors or trustees of a person.

(4) (a) Except as provided in par. (b), "home state" means, with respect to an insured, one of the following:

1. The state in which the insured maintains its principal place of business or, in the case of an insured who is an individual, the individual's principal residence.

2. If 100 percent of the insured risk is located outside of the state referred to in subd. 1., the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single surplus lines insurance

* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

contract, “home state” means the state, as determined under par. (a), of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

(5) “Premium tax” means, with respect to unauthorized insurance, any tax, fee, assessment, or other charge imposed by this state directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(6) “Principal place of business” means, with respect to determining the home state of an insured, the state where the insured maintains its headquarters and where the insured’s high-level officers direct, control, and coordinate the business activities of the insured.

(7) “Principal residence” means, with respect to determining the home state of an insured who is an individual, the state where the individual resides for the greatest number of days during a calendar year.

(8) “State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(9) “Surplus lines broker” means a person that is licensed in a state to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in that state with unauthorized insurers.

(10) “Surplus lines insurance” means any insurance to which all of the following apply:

(a) This state is the home state of the insured.

(b) The insurance is permitted under this subchapter to be placed through a surplus lines agent or broker with an unauthorized insurer eligible to accept the insurance.

(11) “Unauthorized insurance” means any insurance permitted in a state to be placed directly or through a surplus lines broker with an unauthorized insurer eligible to accept such insurance.

SECTION 4. 618.41 (6m) of the statutes is amended to read:

618.41 (6m) RUSTPROOFING WARRANTIES INSURANCE. An insurer issuing a policy of insurance under this section to cover a warranty, as defined in s. 100.205 (1) (g), shall comply with s. 632.18 and the policy shall be on a form approved by the commissioner under s. 631.20.

SECTION 5. 618.41 (8) (a) (intro.) of the statutes is amended to read:

618.41 (8) (a) *Responsibility.* (intro.) An agent or broker, ~~or any other person who offers liability insurance coverage under a group policy,~~ may not place insurance under this section with, ~~or~~ and a person who offers liability insurance coverage under a group policy may not solicit the purchase of coverage under a group policy issued by, an unauthorized insurer if all of the following exist:

SECTION 6. 618.41 (8) (c) of the statutes is amended to read:

618.41 (8) (c) *Financially sound.* To be financially sound for purposes of par. (a) 1., an insurer must be able to satisfy standards comparable to those applied under the laws of this state to authorized insurers, unless this state is the insured’s home state, in which case s. 618.416 applies.

SECTION 7. 618.41 (9) (a) of the statutes is amended to read:

618.41 (9) (a) *Required information.* Every new or renewal insurance policy procured and delivered under this section shall bear the name and address of the insurance agent or broker who procured it and, ~~except for ocean marine insurance,~~ shall have stamped or affixed upon it the following: “This insurance contract is with an insurer which has not obtained a certificate of authority to transact a regular insurance business in the state of Wisconsin, and is issued and delivered as a surplus line coverage pursuant to s. 618.41 of the Wisconsin Statutes. Section 618.43 (1), Wisconsin Statutes, requires payment by the policyholder of 3 percent tax on gross premium.” ~~Every ocean marine insurance policy shall have stamped or affixed upon it the above statement except that the tax shall be one-half of one percent on gross premium.~~

SECTION 8. 618.41 (12) of the statutes is created to read:

618.41 (12) APPLICATION WHEN THIS STATE IS NOT THE INSURED’S HOME STATE. The placement of insurance under this section is not subject to subs. (4), (7m), (8), (9), or (10) if this state is not the insured’s home state and the placement complies with the laws of the insured’s home state.

SECTION 9. 618.416 of the statutes is created to read:

618.416 Qualification for placement of surplus lines insurance with an unauthorized insurer. An intermediary may not place surplus lines insurance under s. 618.41 with an unauthorized insurer if this state is the home state of the proposed insured, unless at the time of placement all of the following apply to the unauthorized insurer:

(1) If the unauthorized insurer is domiciled in a United States jurisdiction, the insurer satisfies all of the following:

(a) In its domiciliary jurisdiction, the unauthorized insurer is authorized to write the type of insurance to be placed with the insurer.

(b) Either the unauthorized insurer has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of either the minimum capital and surplus requirements under the laws of this state or \$15,000,000 or the commissioner affirmatively finds that the unauthorized insurer’s capital and surplus are acceptable. The commissioner’s finding shall be

based on factors that include quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. In no event may the commissioner find that the unauthorized insurer's capital and surplus are acceptable if the unauthorized insurer's capital and surplus are less than \$4,500,000.

(c) The unauthorized insurer provides to the commissioner, no more than 6 months after the close of the period reported on, a certified copy of its current annual statement that is filed and approved by the regulatory authority in the unauthorized insurer's domicile and certified by an accounting or auditing firm licensed in the jurisdiction of the unauthorized insurer's domicile.

(2) If the unauthorized insurer is an alien insurer, the insurer is listed on the quarterly listing of alien insurers maintained by the international insurers department of the National Association of Insurance Commissioners and meets additional requirements regarding the use of the list established by rule of the commissioner.

SECTION 10. 618.43 (1) (a) (intro.) of the statutes is amended to read:

618.43 (1) (a) (intro.) ~~Except as provided in Subject to par. (b) (bc),~~ insurers, agents, brokers, and policyholders are liable, as provided in sub. (2), for a premium tax of 3% 3 percent of gross premiums charged for insurance, excluding annuities, if any of the following ~~are~~ is satisfied:

SECTION 11. 618.43 (1) (a) 3. of the statutes is amended to read:

618.43 (1) (a) 3. The insurance is transacted by an unauthorized insurer for a risk purchasing group ~~for coverage of risks which reside or are otherwise located in this state.~~

SECTION 12. 618.43 (1) (b) of the statutes is repealed.

SECTION 13. 618.43 (1) (bc) of the statutes is created to read:

618.43 (1) (bc) Notwithstanding any other provision of this section, with respect to premiums charged on policies issued or renewed on or after July 21, 2011, for insurance to which par. (a) applies, the tax under par. (a) is required only if the home state of the insured is this state, and it shall be levied on the entire gross premium charged, including premium attributable to those portions of the risk located outside of this state.

SECTION 14. 618.43 (1) (d) of the statutes is amended to read:

618.43 (1) (d) Any insurance business transacted in violation of the law is subject to a premium tax of 5% 5 percent of gross premiums charged for the insurance, ~~except that for ocean marine insurance the tax is 2% of gross premiums charged for the insurance.~~

SECTION 15. 618.43 (6) of the statutes is amended to read:

618.43 (6) ALLOCATION OF TAX. If With respect to gross premiums charged on policies issued or renewed before July 21, 2011, if a policy covers risks that are only partially located in this state, the premium shall be reasonably allocated among the states on the basis of risk locations in computing the tax, except that all premiums received in this state or charged on policies written or negotiated in this state shall be taxable in full under this section, with a credit for any tax actually paid in another state to the extent of a reasonable allocation on the basis of risk locations.

SECTION 16. 628.03 (1) of the statutes is amended to read:

628.03 (1) GENERAL. No natural person may perform, offer to perform, or advertise any service as an intermediary in this state, unless the natural person obtains a license under s. 628.04 or 628.09, and no person may utilize the services of another as an intermediary if the person knows or should know that the other does not have a license as required by law. The licensing requirements of this subsection do not apply to a person who solely procures unauthorized insurance, as defined in s. 618.40 (11), that is not surplus lines insurance, as defined in s. 618.40 (10).

SECTION 17. 628.05 (1) of the statutes is amended to read:

628.05 (1) GENERAL EXEMPTION. Except as otherwise provided in sub. (2), or by rule promulgated by the commissioner, persons engaged in soliciting insurance exclusively for town mutuals are not subject to the licensing requirements of s. 628.03 (1).

SECTION 18. 628.34 (1) (a) of the statutes is amended to read:

628.34 (1) (a) *Conduct forbidden.* No person who is or should be licensed under chs. 600 to 646, no employee or agent of any such person, no person whose primary interest is as a competitor of a person licensed under chs. 600 to 646, and no person on behalf of any of the foregoing persons may make or cause to be made any communication relating to an insurance contract, the insurance business, any insurer, or any intermediary ~~which~~ that contains false or misleading information, including information that is misleading because of incompleteness. Filing a report and, with intent to deceive a person examining it, making a false entry in a record or willfully refraining from making a proper entry, are "communications" within the meaning of this paragraph. No intermediary or insurer may use any business name, slogan, emblem, or related device that is misleading or likely to cause the intermediary or insurer to be mistaken for another insurer or intermediary already in business. No intermediary may provide a misleading certificate of insurance.

SECTION 19. 631.01 (4m) of the statutes is amended to read:

631.01 (4m) RUSTPROOFING WARRANTIES INSURANCE. An insurer issuing a policy of insurance to cover a warranty, as defined in s. 100.205 (1) (g), shall comply with s. 632.18 and the policy shall be on a form approved by the commissioner under s. 631.20.

SECTION 20. 631.20 (1) (a) of the statutes is amended to read:

631.20 (1) (a) No form subject to s. 631.01 (1), except as exempted under par. (c), sub. (1g), or s. 631.01 (2) ~~to~~, (3), (4), or (5) or by rule under par. (b), may be used unless it has been filed with and approved by the commissioner and unless the insurer certifies that the form complies with chs. 600 to 655 and rules promulgated under chs. 600 to 655. It is deemed approved if it is not disapproved within 30 days after filing, or within a 30-day extension of that period ordered by the commissioner prior to the expiration of the first 30 days.

SECTION 21. 631.20 (1) (c) 9. of the statutes is amended to read:

631.20 (1) (c) 9. A form ~~subject to s. 618.41 (6m) for a policy of insurance to cover a warranty, as defined in s. 100.205 (1) (g).~~

SECTION 22. 631.20 (1m) (a) (intro.) of the statutes is amended to read:

631.20 (1m) (a) (intro.) Except as exempted under sub. (1g) or s. 631.01 (2) ~~to~~, (3), (4), or (5) or by a rule promulgated by the commissioner, an insurer may not, on or after August 1, 2008, use a form that is exempt from sub. (1) (a) under sub. (1) (c) unless the insurer does all of the following:

SECTION 23. 631.20 (7) of the statutes is created to read:

631.20 (7) SURPLUS LINES INSURANCE. Except as provided in sub. (1) (c) 9. and s. 618.41 (6m), this section does not apply to a surplus lines insurance form issued under s. 618.41 before, on, or after the effective date of this subsection [LRB inserts date].

SECTION 24. 631.85 of the statutes is amended to read:

631.85 Appraisal or arbitration. An insurance policy may contain ~~provision~~ provisions for independent appraisal and compulsory arbitration, subject to the provisions of s. 631.20. If an approved policy provides for application to a court of record for the appointment of a disinterested appraiser, arbitrator, or umpire, any court of record of this state except the court of appeals or the supreme court may be requested to make an appointment. Upon appropriate request, the court shall make the appointment promptly. This section does not apply to a surplus lines insurance form issued under s. 618.41 before, on, or after the effective date of this section [LRB inserts date].

SECTION 25. 632.32 (2) (ab) of the statutes is created to read:

632.32 (2) (ab) “Commercial automobile liability policy” means a liability insurance policy that is intended

principally to provide primary coverage for the insured’s liability arising out of the ownership, maintenance, or use of a motor vehicle in the insured’s business or other commercial activities.

SECTION 26. 632.32 (2) (ac) of the statutes, as created by 2011 Wisconsin Act 14, is amended to read:

632.32 (2) (ac) “Commercial liability policy” means any form of liability insurance policy, including a commercial or business package policy or a policy written on farm and agricultural operations, that is intended principally to provide primary coverage for the insured’s general liability arising out of its business or other commercial activities, and that includes coverage for the insured’s liability arising out of the ownership, maintenance, or use of a motor vehicle as only one component of the policy or as coverage that is only incidental to the principal purpose of the policy. “Commercial liability policy” does not include a worker’s compensation policy or a commercial automobile liability policy.

SECTION 27. 632.32 (4) (a) (intro.) of the statutes is amended to read:

632.32 (4) (a) (intro.) Except as provided in par. (d), every policy of insurance subject to this section that insures with respect to any ~~owned~~ motor vehicle registered or principally garaged in this state against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall contain therein or supplemental thereto provisions for all of the following coverages:

SECTION 28. 632.32 (4) (bc) of the statutes, as affected by 2011 Wisconsin Act 14, is amended to read:

632.32 (4) (bc) Notwithstanding par. (a) 2., the named insured may reject medical payments coverage. If ~~the one~~ named insured rejects the coverage, the coverage need not be provided in a subsequent renewal policy issued by the same insurer unless ~~the~~ a named insured under the policy requests it in writing.

SECTION 29. 632.32 (4) (d) of the statutes, as affected by 2011 Wisconsin Act 14, is amended to read:

632.32 (4) (d) This subsection does not apply to a commercial liability ~~policy~~ policy if the coverage it provides for the insured’s liability arising out of the maintenance or use of a motor vehicle is limited to coverage for motor vehicles that are not owned motor vehicles, or to an umbrella or excess liability ~~policy~~ policy. If a commercial liability policy or an umbrella or excess liability policy provides medical payments coverage or uninsured motorist coverage, however, the coverage must have limits of at least those specified in par. (a).

SECTION 30. 632.32 (4m) (a) of the statutes, as created by 2011 Wisconsin Act 14, is amended to read:

632.32 (4m) (a) Except as provided in par. (e), an insurer writing policies that insure with respect to a motor vehicle registered or principally garaged in this state against loss resulting from liability imposed by law for

bodily injury or death suffered by a person arising out of the ownership, maintenance, or use of a motor vehicle shall provide to one named insured under each such insurance policy that goes into effect after November 1, 2011, that is written by the insurer and that does not include underinsured motorist coverage written notice of the availability of underinsured motorist coverage, including a brief description of the coverage. An insurer is required to provide the notice required under this paragraph only one time and in conjunction with the delivery of the policy.

SECTION 31. 632.32 (4m) (e) of the statutes, as created by 2011 Wisconsin Act 14, is amended to read:

632.32 (4m) (e) This subsection does not apply to a commercial liability ~~policy~~ policy if the coverage it provides for the insured's liability arising out of the maintenance or use of a motor vehicle is limited to coverage for motor vehicles that are not owned motor vehicles, or to an umbrella or excess liability policy. If a commercial liability policy or an umbrella or excess liability policy provides underinsured motorist coverage, however, the coverage must have limits of at least those specified in par. (d).

SECTION 32. 646.01 (2) (b) of the statutes is amended to read:

646.01 (2) (b) To provide where appropriate for the continuation of protection under policies and ~~supplemental~~ supplementary contracts of life insurance, disability insurance and annuities.

SECTION 33. 646.03 (4m) of the statutes is created to read:

646.03 (4m) "Retained asset account" means any mechanism in which the settlement of proceeds payable under a life insurance policy is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer, under a written supplementary contract not involving annuity benefits.

SECTION 34. 646.31 (1) (intro.) of the statutes is amended to read:

646.31 (1) CONDITIONS OF ELIGIBILITY. (intro.) A claim is not eligible for payment from the fund unless it is an unpaid claim for a loss insured under the policy or annuity, or an unpaid claim under a supplementary contract providing for a retained asset account, and all of the following conditions are met:

SECTION 35. 646.31 (4) (a) of the statutes is renumbered 646.31 (4) (ap) and amended to read:

646.31 (4) (ap) Except in regard to worker's compensation insurance and except as provided in par. (b),

the obligation of the fund on a single risk, loss, or life, regardless of the number of policies or contracts, may not exceed \$300,000, ~~regardless of the number of policies or contracts~~ except that the aggregate liability of the fund for a single risk, loss, or life with respect to benefits for property insurance, liability insurance, and disability insurance, regardless of the number of those policies, may not exceed \$500,000.

SECTION 36. 646.31 (4) (ag) of the statutes is created to read:

646.31 (4) (ag) For purposes of this subsection, "disability insurance" means comprehensive health insurance policies and major medical health insurance policies. "Disability insurance" does not include hospital indemnity; loss of time; accidental benefits; limited or specified benefit or other ancillary coverages; disability income insurance coverage; long-term care insurance coverage; insurance coverage that is supplemental to another insurance policy or program, including Medicare supplement insurance; or similar types of policies.

SECTION 37. 646.35 (1) (b) of the statutes is amended to read:

646.35 (1) (b) Life insurance and supplementary contracts providing for retained asset accounts.

SECTION 38. 646.35 (6) (b) of the statutes is amended to read:

646.35 (6) (b) In the case of a disability insurance policy that is neither guaranteed renewable nor noncancelable, the fund is not obligated to continue the policy in force beyond ~~the time required under s. 645.43~~ 30 days after the date the order of liquidation is entered, or 30 days after the date established in the liquidation order of another state, but may continue the coverage under any disability insurance policy for up to 180 days after the date of the liquidation order.

SECTION 39. Initial applicability.

(1) OCEAN MARINE INSURANCE TAX RATE. The treatment of sections 618.41 (9) (a) and 618.43 (1) (a) (intro.) (with respect to the tax rate exception for ocean marine insurance), (b), and (d) of the statutes first applies to surplus lines ocean marine insurance issued or renewed on the effective date of this subsection.

SECTION 40. Effective dates. This act takes effect on the day after publication, except as follows:

(1) AUTO INSURANCE PROVISIONS. The treatment of section 632.32 (2) (ab) and (ac), (4) (a) (intro.), (bc), and (d), and (4m) (a) and (e) of the statutes takes effect on November 1, 2011, or on the day after publication, whichever is later.